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COUNTRY Yugoslavia

SUBJECT 1. Balance of Frozen Funds  
2. Restoration of American Property

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1. The Yugoslav Government's latest action has shifted the question of release of frozen funds and related questions, particularly that of the restitution of or indemnity for seized American-owned property, from the sphere of economic problems awaiting settlement by normal proceedings into an mainly political issue. The matter is carried still further by the request to place the question of unfreezing funds on the agenda of the UN Economic and Social Council, thereby requesting a verdict and condemnation of the US Government in the matter, which by this very request is labeled unfair and a breach of international practice.
2. I can hardly understand what the Yugoslav Government hoped to gain. In my opinion the Yugoslav Government's position in this matter has been precarious from the start and their latest steps have made it worse. Whereas, in view of the US Government's willingness to have this question of seized American-owned property settled along with questions originating during or because of the war, seemingly tacitly agreeing that the matter of indemnity belongs in the same category, the Yugoslav Government could have obtained an agreement with good grace and without impairing its prestige. It is obvious now that the present regime has made such an assumption impossible and that the true cause of the indemnity claim will have to be disclosed. I do not see how the Yugoslav Government can avoid losing face.
3. In my opinion the real causes for the indemnity claims are:
  - (a) The apparently deliberate delaying and withholding of the restitution of American-owned property after the war in order to pass a nationalization law, and
  - (b) The passing of a nationalization law in which provisions to indemnify former owners are so inadequate as to render the action equal to confiscation.

These actions constitute a breach of international law. The established rule of "denial of justice" entitles the US Government to protect the interests of its nationals who may have been affected by such unlawful actions by means which would not be justified in normal circumstances. The action under (a) above constitutes

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an "administrative" and that under (b) a "legislative" denial of justice; and, in my opinion, justify the exertion of economic reprisals as well as diplomatic pressure. Discussion of these conclusions follows.

Delay in Restitution of American-owned Property

4. As a party to the "United Nations' Declaration against Economic Plundering of Enemy-Occupied Territories and on Invalidation of Axis Measures" of 5 Jan 43, the Yugoslav Government solemnly pledged itself to declare invalid any transfer of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under occupation or control, direct or indirect, of Axis Powers, or which belong, or have belonged to persons resident in such territories. This applies whether such transfer or dealings have taken the form of open plunder or looting, or of transactions apparently legal in form, even when they purport to be voluntarily effected. The Yugoslav Government was under obligation to implement the invalidation of such transfers or dealings with property, rights or interests which had occurred during the occupation, and to assist any government party to this declaration to effect its purpose.
5. The Yugoslav Government did not fulfill this pledge and the law passed to effect restoration of the property described was not applied to the majority of American-owned property and never applied to any American-owned industrial property. This Government could be highly embarrassed were a list compiled showing the devices and methods employed by the regime to delay the restoration. Such a list would prove the regime's intention was to create the impression of doing everything and being willing to effect the restitution and at the same time to raise difficulties of a "technical" nature which alone prevented restitution until the regime considered it safe to pass a nationalisation law. (The dilemma which faced the Government is obvious: on the one hand party doctrine called for nationalisation of all industrial property; on the other was the desire to accomplish as much as possible at the impending Peace Conference, among other ways, by creating the impression that those conditions of which the western democracies did not approve had to be ascribed to conditions prevailing immediately after the war, when such measures were necessary, but that there is now a trend to normalize the Government's practice.)
6. One such device employed to delay restoration was the Government's deliverance, in about November 1943, of a circular note to all governments whose nationals owned industrial and other property in Yugoslavia, inviting them to initiate discussions for restoration of the property. Then the Yugoslav Government created all manner of difficulties when the governments concerned asked that visas be granted the owners or their representatives to come to the country. When visas had finally been granted the visitors, they were not allowed to visit their plants. Further difficulties were presented later when some governments accepted the proposal even under conditions laid down by the Yugoslavs. In the end no industrial property, with the exception of a few Czechoslovakian plants, was restored.

Nationalisation Law

7. There is a possibility that the Yugoslav Government will claim the US Government made the release of frozen funds dependent on payment of indemnity, thus forfeiting its right for a "reprisal" because it violated international law and fair practice. Should this contention be made, I should like to point out:

- (a) The treatment of UK property, particularly its non-restoration, and the way in which the Yugoslav regime evaded restoring it until passage of the nationalisation law, despite release of Yugoslav gold frozen during the war in Great Britain, and despite the promise given in the initialed draft agreement as a result of which the release was effected.

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